

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

COURTNEY BOYD
Plaintiff

Vs.

2:06 CV-511-WKW

DR.DARBOUZE et.al.,
Defendants.

TRAVERSE TO THE DEFENDANT'S SPECIAL REPORT

Comes Now, The Plaintiff, Courtney Boyd, moves into this Honorable Court of Judge Charles S. Coody, Chief United State Magistrate Judge for the United States District Court for the Middle District of Alabama:

1. The Plaintiff has taken a review of the Defendant's special report in order to detremine the facts and circumance relevant to their claims. The Defendants has submit their sworn statement , medical records , which is the subject matter of this complaint.
2. The Defendants can not plead the defense of qualified immunity, because the defendants are not employed by the State of Alabama but has a contract which them to provide inmates medical care. The Doc will tell us as inmates, that they can not make them see us, because they are not employed by the State of Alabama, but just has a Contract to come in and give us medical care.
3. The Defendant said that the plaintiff claims are moot because the events which underlie the complaint have been resolved. However the defendants have not resolved any thing with the plaintyiff, and they still will not give him back his back brace.
4. The Defendants also claim that the plaintiff was wearing a back brace when he came to Easterling Corr.Fac. on 8-17-05. However that

lie, upon leaving any institution each inmate is given an property sheet to show the institution inwhich the inmate is going what the officer at that institution pick into his property. The Plaintiff did not have an Back Brace when he came to Easterling Corr.Fac. See Exhibit A, which is a copy of the property sheet taken by Elmore Corr.Fac. on 8-16-06. This property sheet does not shows that the palintiff had a back brace in his property.

5. The Defendant was order by this Honorable Court not to file ~~for~~ any summary of judgment or any other dis~~positive~~ motion. However the defendants has request for summary of judgment, even after this Honorable Court had informed them not to do so.

6. The Defendants admitted that Dr.Darbouze discontinued the plaintiff profile, which were not medical NECESSARY, for him to have them. However on 6-05-06, Defendant K.Wilson respondent to the plaintiff inmates Grievance by saying " Mr.Boyd at your appointment to see Dr.Darbouze he did not take your botton bunk & back brace profiles. You said you didn't want them, and gave them back, you also took your back brace off, gave it back. As you were explained to on that same day he will not re-write these profiles. See Exhibit B, which is a copy of the inmate Grievance. On 6-16-06, the Defendant K.Wilson response was " Mr.Boyd, when you were seen by Dr.Darbouze at your appointment, there were no prfiles medically indicated. Dr.Darbouze did not say he would going to take the profiles he had given you. You gave your profiles back to the brace to a nurse." So the plaintiff has proven his claim, because the defen-dants admitted in the records that they took the plaintiff back brace and profiles on 6-2-06.

7. The Plaintiff has been wearing a back brace since 7-01-03, and all of the other Doctor that he seen said that it was medical necessary for the plaintiff to have a back brace. SEE the plaintiff medical profiles. The Plaintiff was seen by an free world medical Doctor, who said that the plaintiff has a lower back injury. See Exhibit C, which is a copy of Dr.Bentley examination of the plaintiff on 8-11-06. So the defendants can not say that there's nothing wrong with the plaintiff back, because he has been examine by an free world M.D. who disagree with Dr.Darbouze, along with all of the other Docotr that the plaintiff has seen before Dr.Darbouze, agree with Dr.Bentley that there's some wrong with the plaintiff lower back. The Defendant Dr.Darbouze must feel that there is something wrong with the plaintiff back, because he never stop order the plaintiff pain medication for his lower back pain. See Dr.Darbouze Affidavit.

8. The Defendant C. Wambles says that she did not denied the plaintiff medical treatment on 6-11-06, but she agree that the plaintiff was not seen unstill thrid shift nurse's came on duty. Which means that she was working when Officer Whitehead call the HCU, and infromed them that the plaintiff whole lower body had want out on him and that he could not move. And the nurse's said for him to sign up for sick call.

9. The Defendants said that the plaintiff did not follow the administative remedies as mandated by the Prison Litigation Reform ACt. However the Defendants admitted that the plaintiff filed some inmate Grievance from, and this is the only remedies that the plaintiff had to follow, and he did.

10. The Defendants says that the plaintiff has failed to State a claim upon which relief maybe granted. The Plaintiff has stated claim upon which relief can be granted, because he has shown an clear 8 amendment violation, to be free form crul and unusual punishment.

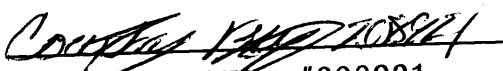
11. The Defendants response is unsupported by the facts of this case. Because the plaintiff has a lower back pain problem, which the defendants know of , but deliberate inflicted serious pain upon the plaintiff knowingly. The Defendants took the plaintiff back brace because he know that the plaintiff lower body would go out on him. The Defendants action was done to cause serious harm to the plaintiff.

12. The Plaintiff submit an copy of a picture of him in a back brace to show that Honorable Court how he stand with his back brace, and to show this Honorable Court that without his back brace the plaintiff was suffer serious pain, and is not able to walk along way, and is not able to stand all the way up. So this is why all the other Docotr has given the plaintiff an back brace. Exhibit 12 which is a copy of the plaintiff picture of him in a back brace.

WHEREFORE, The Plaintiff prays that this Honorable Court will set this matter down for an evidentiary hearing.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing upon the Defendants Counsel by placing them into the Staton Corr.Fac.Mail Box on September 4. 2006.


COURTNEY BOYD #208921

ARGUMENT IN SUPPORT OF TRAVERSE

The Plaintiff, Courtney Boyd, filed a law suit against the defendants Dr.Darbouze, Ms.Wilson, Prison Health Service, Jane Doe. On June 14,2006, The Plaintiff an Motion to Amend, and the defendant Chnthia Wambles, and Officer Whitehead, would add as the defendants. The Defendants Dr.Darbouze, Ms.K.Wilson , C.Wambles, filed for an extention of time on July 24,2006. The Defendant Whitehead filed his special report and answer on 7-31-06. The Dr.Darbouze, K.Wilson,C.Wambles, filed their special report answer 8-25-06. Which was last, because the special report should have been filed on 8-24-06, and Post- Marked on the same day. However as this Honorable Court can see from Exhibit 1, Which is a copy of the Post-Mark date shopwing the 8-25-06. The Defendant was infromed by this Honorable Court not to file "No motion for summary judgment, motion to dismiss or any other dispositive motions addressed to complaint be filed by any party without permission of the court. If any pleading denominated as a motion for summary judgment, motion to dismiss or other dispositive motion is sent to the court, the court shall not file or otherwise treat the pleading as a dispositive motion until and unless further order of the court". Now the plaintiff has not received any court order given the Defendants Dr.Darbouze, K.Wilson, C.Wambles, or Officer Whitehead, the permission to file for summary of judgment or motion to dismiss. The plaintiff request with this Honorable Court permission to a sanctions on the defendants pursuant to 37 R.F.Civ.Proce. for failing to comply with this Honorable Court order on 6-12-06. The Plaintiff files his answer to their special report as follows:

The plaintiff claims that the defendant are well aware of his lower back pain problem, but has failed to provide him with adequate medical care. The Plaintiff

has been seen by the defendant over seven time requesting for his back brace to be given back to him, because he is unable to walk along way or he is unable to stand all the way up, without his lower body going out. See Exhibit E, Which is a copy of the plaintiff sick call request. The Defendants took the plaintiff back brace to cause him serious harm. The Defendant K.Wilson write back to the plaintiff on inmate Grievance is that the defenant Dr.Darbouze did not take your back brace, but that you gave it to him. She also write back on another inmate Grievance saying "Dr.Darbouze did not say he was going to take the profiles he had given you. You gave your profiles back and your brace to a nurse". However Defendant Dr.Darbouze files an sworn affidavit admitting that he did take the plaintiff back brace and profiles, because they were not medical indicated for his treatment. See Exhibit B, which is a copy of the response of K.Wilson to the plaintiff Grievance. These two defendants statement are in conflict with one another. The plaintiff was brought back to the HCU on the same day that Dr.Darbouze took the plaintiff back brace, the plaintiff was brought back on an strecher, because his lower back and lower body had gone out. See. The Plaintiff original complaint at Pg.2. The Defendants has taking the plaintiff back brace and denied him proper treatment to only cause him serious bodily harm. The Defendants sole purpose of taking the plaintiff back brace was done maliciously deliberate to inflicted serious unnecessary pain. As a result of him taking the plaintiff back brace, the plaintiff whole lower body has been going out on him worse then it was before. The Defendant K.Wilson is the head nurse and if the doctor is not doing his job correctly, then its her job to report him to the Prison Health Service, after she has talked with him about a complaint about him not given an inmate proper treatment. However the Defendant K.Wilson would not tell the Defendant Dr.Darbouze, he need to need the plaintiff proper medical care, after the plaintiff wrote her over (3) complaint from, complaining about not serving proper medical care. The Defendant C.Wambles, is well aware

of the plaintiff lower back pain problem, and is also well aware of his lower back pain, causing his whole lower body to go out on him. But instead of treating him, she and the other nurse's in the HCU, only makes fun of the plaintiff lower back pain problems. The Defendant C.Wambles was working 8-02-06, when the plaintiff came over to the HCU on the stretcher, the defendant and the other nurse's working being making jokes, When I said, I will let the court know how you all are doing me. They said "Make sure spell our names right, because last time you don't, and you need to learn how to spell penies". They was saying that because I had misspelled nurse wambles on the motion to amend, and because I misspelled penies on some of my sick call request. They did made two inmates come in pick me up, even through they know I said that my lower body and lower back was out. See Exhibit F, Which is a copy of the plaintiff on every day that the plaintiff lower body went out on him. Also their an Affidavit from the Two inmates who the defendant and the other nurses had pick me up. The Plaintiff has had a brace for his back for the last three years and has been taking medication for his back for the last three years. The Defendant Dr.Darbouze has still even given the plaintiff some medication for his back pain, even though he took his back brace. See the defendant Dr.Darbouze Affidavit. The plaintiff profile that he was given by Dr.Darbouze did not end until 10-21-06. So why would the defendant take some he just gave the plaintiff for his back pain. It is sample the defendant Dr.Darbouze he to get even with the plaintiff for file a complaint against him and Ms.K.Wilson to the head office, so to get back at the plaintiff he took the plaintiff back brace with the intention of causing serious bodily harm to him. The Defendant must have felt that something would wrong with the plaintiff when he first wrote the back brace profile. The Defendant still feels that there something wrong with the plaintiff back, because he never stop given the plaintiff pain medication for his back pain. See the Defendant Affidavit.

The Defendant K.Wilson, can not say that Dr.Darbouze gave the plaintiff proper medical care, because she has never been in the Doctor office at the same time that the plaintiff was been seen by Dr.Darbouze. On the day that Dr.Darbouze took back the plaintiff back brace, the defendant K.Wilson, was not at work, so she can swron an affidavit to that. The Defendant are trying to plead qualified immunity, but it is clear from their on special report filed, that Defendant are _____ Prison Health Service, and the Prison Health Serivce only has a contract with the Alabama Department of Corrections to provide medical service to inmates. These are two drfference company, because the DOC can not tell Prison Health Serivce nothing. An fact if DOC wanted to send someone to the HCU, and Prison Health Service says no, then DOC can not do anything about it. Therefore the Defendant are not entitled to plead qualified immunity, because they are employ by Prison Health Service.

For the plaintiff to properly allege a constitutional violation based on failure to provide adequate medical care, a person "Must allege acts or omissions suffiffiently harmful to evidence deliberate indifference to a serious medical needs. See Calhoun vs.Thomas _____ F.Supp.2d _____ 2005 WL 646803 (M.D. ALa.2005) Estell vs.Gamble 429 U.S. 97, 106 S.Ct. 285 1976). "Delibarate indifference" requires that the official know of and disregard an excessive risk to inamte health or safety. See Farmer vs. Brennan, 511 U..S 825, 114 S.Ct. 1970, 128 L.Ed.2d. 811 (1994). The Official "must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and they must also draw the inference." ID. Deliberate indifference contemplates a state of mind more blameworthy than negligence. ID. at 835, 144 S.Ct. at 1978. A "serious condition" is an objectively serious medical need that if

left unattended, poses a serious risk of harm. Taylor vs. Adams, 221 F.3d 1254 (11th Cir.2000). The condition must have either been diagnosed by a physician as mandating treatment or be "So obvious that even a lay person would easily recognize the necessity for the doctor's attention. See Hill vs. DeKalb Regional Youth Detention Center 40 F.3d 1176 (11th Cir.1994). See The Plaintiff affidavit which ordinary people easily recognize the necessity for the plaintiff to have doctor's attention, on 6-11-06, as well everyday.

The Plaintiff argues that a prison conditions rise to the level of an Eighth Amendment violation only when they involve the wanton and unnecessary of inflicting pain on some one. See Hope vs. Pelzer 536 U.S. 730, 122 S.Ct.2508, 153 L.Ed.2d 666 (2002); Farrow vs. West 320 F.3d 1235 (11th Cir.2003).

The Plaintiff argues that "To demonstrate an Eighth Amendment violation with request to conditions of confinement, a prisoner must satisfy both an objective and a subjective inquiry. See Miller 384 F.3d. at 1261. Under the objective inquiry, that he prove that he was denied the "Minimal Civilized Measure of life's necessities". ID. (quoting Chandler vs. Crosby, 379 F.3d. 1278, 1289-90 (11th Cir.2004). The condition challenged must be "Extreme" and must pose "an unreasonable risk of serious damage to his future health." Chandler 379 F.3d. at 1289-90. Under the subjective component, the prisoner must prove that the Defendant acted with "Deliberate indifference" in disregarding that risk. See Farmer 511 U.S. at 337, 114 S.Ct. at 1979. The Plaintiff has satisfy both the objective inquiry and the subjective inquiry.

The Plaintiff argues that deliberate indifference to a serious medical needs of a prisoners constitutes the unnecessary and wanton infliction of pain, and that is a violation of the Eighth Amendment right to be free from cruel and unusual punishment. Estelle vs. Gamble 429 U.S. 97, 104 (1976).

The Defendants failed to provide the plaintiff with adequate medical care for his lower back pain. The Defendant Dr. Darbouze took the plaintiff back brace to cause him further serious lower back pain. Even after seeing that the plaintiff's whole lower body has been going out since he took the plaintiff back brace and even after the plaintiff has signed up for sick call over six times requesting his back brace, because it helps his back and enables him to stand all the way up without serious pain shooting through his lower back. The Defendants know that the plaintiff can not walk for a long way without his back brace, and they know that his whole lower body is going out without it.

The Plaintiff was seen by a free world Doctor by the name of Dr. Amy L. Bentley, M.D. on August 11, 2006. Because he has a trial date set for September 25, 2006. Against the Officer who injured his back from the start. Dr. Bentley's conclusion was that "I often ask patients to reproduce maneuvers that reportedly cause pain, but do so in a way that they do not realize I am examining their response. For example, in Mr. Boyd's case, there was severe limitation in spine motion. He was only able to flex at the waist to twenty degrees (20). In an attempt to verify this disability, I created a situation in which he was called upon to bend over when that was not the skill/ability being tested. To such end, I asked him to remove his socks and shoes so I could check his feet. In a manner consistent with patients having limited range of motion in their spine, he squatted to remove his shoes and socks. This is the type of internal validity of an examination that must exist for me to consider a patient's complaints and the physical findings of the examination reliable. Also of note is Mr. Boyd's pain scale use. He volunteered the rating of 6-7 out of 10 without my prompting. Many patients automatically rate their pain as 10 out of 10 but do not have other evidence of

that level of pain such as elevated heart rate and blood pressure. 6-7 out of 10 pain does occur with the muscle and back injuries seen in Mr. Boyd and is associated with routine daily activities. His story is not exaggerated based on his tendency to accurately report pain. In summary, my examination of Mr. Boyd and the other items noted above causes me to conclude that Mr. Boyd's current physical condition consistent with the reported "MECHANISM OF INJURY". Mr. Boyd's physical condition is similar to many other blunt force and contusion-type injuries to the trunk that I have seen in my practice. The type of physical insult described results in the type of injuries suffered, pain described, and disability and incapacitation observed in Mr. Boyd. The effect on his state of health is a direct impact of the loss of wellness in this previously healthy young person. Sadly, Mr. Boyd is not a person with unlimited employment prospects. He is not a college graduate suited for office work. He has minimal education compared to most people in his generation. He is probably intellectually suited for a trade job. Construction, maintenance, or factory work would be a suitable job for his educational background. They are all fine jobs, but not for Mr. Boyd. Limitations in his physical abilities severely restrict his ability to pursue a job on release. He is not capable of any bending, twisting, kneeling, above the head or lifting work whatsoever. He does not have a medical problem correctable by surgery. Chronic muscle spasm responds somewhat to medicines and therapy. Therapy is obviously not within his reach at present. With the severe limitations in his future ability to perform a job noted above, Mr. Boyd has very minimal rehabilitation potential. Courtney Boyd has been given a life-long disability. See Exhibit C, which is a copy of Dr. Bentley medical examination of the plaintiff.

Therefore the plaintiff ask this Honorable Court for an free world doctor visit to a specialist for his back. Also that he be given an Evidentiary Hearing and he awarded compensation damage for his pain that the Defendants deliberate infliction upon him by taking his back brace for no reason whatsoever.

CONCLUSION

The conclusion is that the defendants action against the plaintiff was done deliberate to inflict serious pain upon the plaintiff, the plaintiff has submit an expert opinion of Dr.Bentley, and she said that the plaintiff has a lower back pain problems. A "Serious medical condition" is an objectively serious medical need that, if left unattended, poses a serious risk of harm. Taylor vs.Adams 221 F.3d.1254 (11th Cir.2000). The condition must have either been diagnosed by a physician as mandating treatment or be "so obvious that even a lay person would easily recognize the necessity for a doctor's attention. " Hill vs. Dekalb Regional Youth Detention Center 40. F.3d 1176 (11th Cir.1994). The Plaintiff has submit both an examination of a Doctor and ordinary people have both said that the plaintiff has a lower back injury which could poses a serious risk of harm if left unattended. The Defendant Dr.Darbouze retaliate back at the plaintiff for filing a complaint against him and Ms.Wilson to the head office, and because I had an law suit against DOC, and I was requesting a free world doctor vist. So to get back at the plaintiff, he deliberate took the plaintiff back brace to inflict serious pain upon the plaintiff because the plaintiff was having serious pain, and his lower body was going out before, Dr.Darbouze took his back brace. but now this problems has gotting worst because the plaintiff is not wearing his back brace. The Defendants action constitutes deliberate indifference. The Plaintiff request that he be award Compensation and punitive damages, because the defendants willfully maliciously took the plaintiff back brace for the sole purpose of inflicting serious pain upon the plaintiff. The Defendants Dr.Darbouze, Ms.K.Wilson, Ms.C.Wambles all deliberate inflicted serious pain upon the plaintiff, even after they seen that without his back brace his lower was going out. Also even after the plaintiff sign up for sick call over six time and was seen by the Doctor eight diffent time other then 6-0206, and they still would not give the plaintiff his back brace back. If the plaintiff gave it back as they claim

then why have the defendants not giving him his back brace back after he has been seen by the Defendant Dr.Darbouze eight different time other then, when they claim that the plaintiff gave it back to them.

The Defendants action constitutes cruel and unusual punishment a violation of the plaintiff Eight Amendment to be free from cruel and unusual punishment.


WHEREFORE The Plaintiff request for an evidentiary hearing, so that this Honorable Court will see that the plainitff is unable to stand all the way up without his back brace.

Respectfully Submitted


COURTNEY BOYD #208921

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing upon The Defendants Counsel, by placing it into the Staton Corr.Fac. Mail Box on September 4 2006.


COURTNEY BOYD #208921